IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6527 OF 1998

1.Pratap Damodhar Divekar
2.Prakash Damodhar Divekar
3.Pramod Damodhar Divekar
4.Pradip Damodhar Divekar
5.Prashant Damodhar Divekar
6.Prafulla Damodhar Divekar
7.Smt.Ramabai Damodhar Divekar
8.Smt.Medha M.Mahajan
9.Smt.Suman S.Kulkarni
10.Smt.Shailaja Damodar Divekar
11.Smt.Kusum Damodhar Divekar

All residing at Prarewadi, Tal.Karmala, Distrcit Solapur. ...Petitioners (Ori.Applicants)

Versus

1.Shri Vithal Krishna Shinde
2.Shri Nivrutti Krishna Shinde
3.Shri Balbhim Krishna Shinde
4.Shri Pundalik Krishna Shinde
5.Smt.Muktabai Ganpatrao Nimajkar,
Adult, Occ. Household, Resident of
Terrace Woods, II floor, Near Gadage
Maharaj High School, Kondawa, Pune-2.

6.Smt.Bhagirathi Ghumare
6A.Shri Amrit Bhausaheb Ghumare
6B.Shri Bhausaheb Ganpatrao Ghumare,
residing at Kausadi, Taluka Jintur,
Dist.Parbhani.

6C.Sou.Nirmala Avinashrao Darekar
7.Shri Ramhari Nivrutti Navele

Nos.1 to 3 & 7 of Parewadi,
Tal.Karmala, Dist.Solapur and

No.4 of Kadam Wadi, Dist.Solapur,

No.6 of Ambora, Dist.Beed,

No.6A- Block No.14, Market
Commitee Shopping Centre,]
Karmala, Dist.Solapur.

No.6C Sou.Nirmala Avinashrao Darekar,
C/o. Civil Judge, Civil Court,
Ichalkaranji, Dist.Kolhapur.

8.State of Maharashtra ...Respondents
through Revenue Authorities (Nos.1 to 7
Ori.Opponents)

.....

Mr.M.R.Katikar for Petitioners.

Mrs.A.R.S.Baxi for Respondents 1, 2, & 7.

Mr.M.A.Choudhari for Respondent No.4.

Mr.A.H.Palekar, A.G.P. for Resondent No.8.

ALONG WITH

WRIT PETITION NO.4416 OF 1990

1.Vithal Krishna Shinde
2.Nivrutti Krishna Shinde
3.Ramhari Nivrutti Navale

All residing at Parewadi, ...Petitioners/
Taluka Karmala, District (Ori.Opponents 1, 2
Solapur. & 7 respectively)

Verus

1.Pratap Damodhar Divekar
2.Prakash Damodhar Divekar
3.Pramod Damodhar Divekar
4.Pradeep Damodhar Divekar
5.Prashant Damodhar Divekar
6.Prafulla Damodhar Divekar
7.Ramabai Damodhar Divekar
8.Suman S.Kulkarni
9.Medha M.Mahajan,

R/o. C/o.M.G.Mahajan,
H-605, Parwati Nagar,
Vithalwadi, Jakatnaka Post,
Sinhgad Road, Pune - 411 030.

10.Shailaja Damodhar Divekar
11.Kusum Damodhar Divekar
12.Balbhim Krishna Shinde
13.Pundalik Krishna Shinde
14.Mukta Sampat Nimjkar
15.Amrit Bhausaheb Ghumre
16.Bhausaheb Ganpatrao Ghumre
17.Nirmala Avinashrao Darekar

Nos.1 to 12 residing at Parewadi,
Taluka Karmala, District Solapur.

No.13 residing at Kadamwadi,
District Solapur.

No.14 residing at New Raviwar
Peth, Pune-2.

No.15 residing at Block No.14,
Market Committee Shopping Centre,
Pothre Naka, Karmala, Dist.Solapur.

No.16 resodomg at Shripur,
Taluka Patoda, District Beed.

No.17 residing at Ichalkaranji,
District Kolhapur.

18.The State of Maharashtra

...Respondents
(Nos.1 to 11-Ori. Applicant, Nos.12 to 17 Opponents 3 to 6, 6A, 6B & 6C respectively)

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Mrs.A.R.S.Baxi for Petitioners.

Mr.R.S.Kate for Respondent No.1.

Mr.A.H.Palekar, A.G.P. for Respondent No.18.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 29, 2004.

ORAL JUDGMENT :

1. Both these Writ Petitions can be disposed of by common Judgment, as they are between the same parties in relation to same suit land, which is agricultural land bearing Survey No.115/2 and 115/3 situated at Parewadi, Taluka Karmala, District Sholapur. The said lands were originally owned by Damodar Divekar (hereinafter referred to as 'Divekar" for the sake of convenience). Survey No.115/2 was in occupation of Krishna Shinde, whereas, Survey No.115/3 was in occupation of Jagannath Navle as tenants (hereinafter referred to as 'tenants' for the sake of convenience).

2. What is relevant for our purpose to note is that proceedings under Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') were commenced in respect of the suit lands by the

agricultural lands Tribunal, Karmala on the assumption that the tenants were in unauthorised occupation of the suit lands. Simultaneously, Divekar, the landlords preferred application under Section 84 of the Act for restoration of possession of the suit lands on the assertion that they were about ten in number and had no agricultural land to sustain themselves. The said proceedings numbered as Tenancy Case No.28 of 1998 were disposed of by the Assistant Collector, MHADA Division, Kuluwadi by decision dated January 22, 1999. The said Authority took the view that in so far as land bearing Survey No.115/2 is concerned, proceedings for determination of purchase price were initiated, but the same ended against the tenants on the finding that the tenants were holding land in excess of the ceiling limits, for which reason, they were not entitled to purchase the same. That view has attained finality with the rejection of the Writ Petition preferred by the tenants before this Court. In other words, purchase in favour of the tenants has become ineffective because of the said finding. The consequence of that declaration was one of vesting of the land in State Government

by virtue of provisions of Section 32P of the Act and the land could be disposed only in terms of the said provisions as per the priority list.

3. In so far as Survey No.115/3 is concerned, it has been found that the sale of the said land in favour of tenant Navle effected in the year 1958 was invalid, being contrary to the requirements of the Act. That view has also attained finality. In other words, sale in respect of land being Survey No.115/3 in favour of Navle has been invalidated by the competent Authority. The consequence of said declaration is, vesting of the land in the State Government by virtue of Section 84C of the Act and such land can be disposed of only in terms of sub-section (4) of Section 84C of the Act. It is on the aforesaid reasoning, the Assistant Collector took the view that there was no question of restoration of the land in favour of the landlords. Whereas, the land stood forfeited to Government, free from all encumbrances and became available for disbursal in accordance with the provisions of Section 32P and 84C of the Act respectively. This decision was challenged by the tenants by way of

Revision Application No.MRT/SH/III/9/90 (TNC.B.68/90), Pune, before the Maharashtra Revenue Tribunal. Even the landlords filed separate Revision Application before the Maharashtra Revenue Tribunal being MRT S.H.V.8/90 (TNC.B.146/90) Pune-1. The Tribunal, however, disposed of both the Revision Applications by separate decisions. The Revision Application preferred by the tenants has been decided on July 18, 1990; whereas, the Revision Application preferred by the landlords is decided on February 18, 1998. Both the decisions of Tribunal are subject matter of challenge in the respective Writ Petitions filed by the landlords Divekar (Writ Petition No.6527/98) and the Tenants (WP 4416/90).

4. Both sides are aggrieved by the view taken by the Tribunal in the impugned decisions. The Tribunal has set-aside the order passed by the Assistant Collector directing forfeiture of the suit lands to Government, free from all encumbrances. According to the landlords, that decision of the Tribunal cannot be sustained. Whereas, the tenants have taken exception to the

view taken by the Tribunal in dismissing their Revision Application and confirming the view taken by the Assistant Collector that the land has been forfeited to Government, free from all encumbrances.

5. Having considered the rival submissions and going through the records, the undisputed facts as would emerge are that in so far as Survey No.115/2 is concerned, proceedings for determination of purchase price were initiated; but on enquiry, it was finally found that the tenants were not eligible to purchase the suit lands, since their holdings was in excess of the ceiling limits. That view has become final right up to this Court by the dismissal of the Writ Petition preferred by the tenants. If that position is to prevail, it would necessarily follow that the said land will have to be disposed of in terms of the provisions of Section 32P of the Act and neither the landlord nor the tenant can set up claim thereto, to remain either in juridical possession or to occupy the same. It would be a different matter if the landlords or the tenants,

as the case may be, were eligible to claim disbursal of the said land in their favour if they qualify one of the categories specifically provided in the priority list. In that sense, neither the landlords, nor the tenants could assert that they are entitled to retain possession of the suit lands. In substance, this is the view taken by the First Authority in respect of Survey no.115/2 and which is the correct position in Law.

6. In so far as Survey No.115/3 is concerned, it is not in dispute that the said lands were transferred in favour of Navles by the landlords in the year 1958. However, the competent Authority, on enquiry, has eventually declared that transaction to be invalid. Even that decision or declaration has become final. If it is so, it necessarily follows that such a land would vest in the State Government, free from all encumbrances by virtue of provisions contained in Section 88C of the Act; and that land will have to be disposed of in terms of Sub-section (4) of Section 84 of the Act. Indeed, sub-section (4) would enable the tenants in actual possession of the land to claim

disbursal of such land in their favour. However, as it has been found that the tenants were holding lands in excess of ceiling limits on the relevant date i.e. 1st April 1957, which is the tillers' day, the present tenants will not be entitled for disbursal of the land in their favour by virtue of Section 84C (4)(i) of the Act. But at best, they may apply for allocation of land in their favour in terms of Section 84C (4)(ii) of the Act, which provides for disbursal of the land in favour of persons or bodies in the order of priority list. The priority list is noted in Section 32P(2) of the Act. If the tenant fulfils the said requirement, the tenant would be entitled for allocation of the land in question. Merely because the Authorities have not taken the matter to its logical end- of disbursal of the land as required by Section 32P and Section 84C respectively, that does not mean that the tenant who is still in possession of the suit lands would become entitled for any relief of declaration as owner.

7. Obviously, no steps have been taken by the Authorities under Section 32P or Section 84C

because of the pendency of the litigation althroughout till now. However, with the disposal of the present Writ Petitions, the Authorities will be obliged to take the matter to its logical end by resorting to powers under Sections 32P and 84C of the Act of disbursal of the lands in question.

8. For the view that I have taken, in my opinion, both the Petitions will have to be disposed of with direction to the competent Authority to take immediate steps for disbursal of the suit lands bearing Survey Nos.115/2 and 115/3 by following necessary procedure under Sections 32P and 84C of the Act. In other words, the landlords will not be entitled for any relief under Section 84 of the Act. Nor the tenants have acquired any right, merely because they have continued to remain in possession inspite of the orders passed in the earlier proceedings, holding that they were not entitled to purchase the suit lands - as their holding was in excess to the ceiling limits and the transaction of the tenants, having been determined to be invalid.

9. It will be open to the landlords as well as the tenants to make application to the competent Authority for allocation of suit lands to them. If such application is filed, the Authority may consider the same on its own merits and subject to the eligibility of the concerned party, and take appropriate decision in the matter.

10. Accordingly, both these Petitions are disposed of with the above directions to the competent Authority. No order as to costs.

11. Issuance of certified copy is expedited.

A.M.KHANWILKAR, J.